

Message Text

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ACTION EUR-25

INFO OCT-01 ADP-00 AID-20 CEA-02 CIAE-00 COME-00 EB-11

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L-03 STR-08 RSR-01 /139 W

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TO SECSTATE WASHDC 9119

INFO AMEMBASSY MADRID

USMISSION GATT GENEVA

UNCLAS SECTION 1 OF 2 OECD PARIS 6947

E. O. 11652: N/ A

TAGS: EFIN OECD

SUBJECT: SPANISH RESTRICTIONS ON FOREIGN FILMS

REF: (A) OECD 3253; (B) STATE A-846; (C) MADRID 1130;
(D) STATE 27231; (E) MADRID 725

1. SUMMARY. OECD SECRETARIAT BELIEVES REF (B) DOES NOT PRESENT STRONG LEGAL CASE UNDER INVISIBLES CODE AGAINST SPANISH FILMS RESTRICTIONS DESPITE EXCELLENT ANALYSIS. DEPT. LEGAL ADVISER. QUESTION THEREFORE ARISES AS TO HOW WE CAN BEST PROCEED FROM HERE IN CONTEXT OF POSSIBLE SCENARIO DESCRIBED PAGE 3, REF (B). ACTION REQUESTED: DEPT. REACTION TO PARA 6 BELOW. END SUMMARY.

2. IN ACCORDANCE REF (D), WE HAVE SOUGHT OPINION OF OECD SECRETARIAT ON LEGAL ANALYSIS REF (B) AND ITS ATTACHMENT. SET OUT BELOW ARE SECRETARIAT'S REACTION AND OUR COMMENTS ON FIVE AREAS OF CONTENTION AS RELATED TO FILMS ITEM AND FILMS ANNEX IN INVISIBLES CODE:

(A) SCREEN QUOTAS - AS NOTED IN DEPT. S, ANALYSIS, PARA 2 FILMS ANNEX ALLOWS SPANISH SCREEN QUOTAS ON FEATURE FILMS.
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SPANISH RESERVATION TO ITEM E/1 COVERS SCREEN QUOTAS ON PRINTED FILMS AND OTHER RECORDINGS TO BE USED ONLY FOR TELEVISION. (COMMENT: SPANISH RESERVATION NOT INVALID AS DEPT. CLAIMS ON PAGE 6, ATTACHMENT REF (B) . BEFORE ADOPTION NEW FILMS ANNEX, THERE WAS NO AGREEMENT AMONG MEMBERS ON WHETHER T. V. SCREEN QUOTAS WERE PROHIBITED BY FILMS ANNEX. IN RETURN FOR CLARIFYING IN NEW FILMS ANNEX THAT T. V. SCREEN QUOTAS ARE NOT PERMITTED, MEMBERS ALREADY WITH SUCH QUOTAS WERE ALLOWED TO LODGE NEW RESERVATIONS. SEE PAYMENTS COMMITTEE' S COMMENTS ON THIS POINT IN PARA 14 OF C(72)174.)

(B) DUBBING FEES - AS DEPT. NOTES, SPANISH RESERVATION ON PARA 5 OF FILMS ANNEX COVERS THEIR IMPOSITION OF DUBBING FEES ON FOREIGN FILMS. SECRETARIAT NOT YET ABLE TO REPLY WHETHER DIFFERENTIAL RATES ON FOREIGN FILMS ACCORDING TO COUNTRY OF ORIGIN VIOLATE ARTICLE 9 (NON- DISCRIMINATION PRINCIPLE). MATTER HAS BEEN REFERRED BY SECRETARIAT TO ITS LEGAL SERVICE FOR AN OPINION. (COMMENT: LEGAL SERVICE SEEMS RELUCTANT TO GIVE ITS OPINION IN ADVANCE OF FORMAL U. S. APPROACH TO ORGANIZATION . SECRETARIAT DIRECTORATE DEALING WITH FILMS , HOWEVER, HAS SAID THAT IT IS PUSHING MATTER AND HOPES FOR SOME KIND OF RESPONSE). SECRETARIAT NOTES THAT USG MAY, IF IT CHOOSES, REFER INFRACTION OF ART. 9 PRINCIPLE TO ORGANIZATION UNER ART. 17 OF THE CODE.

(C) CEILING PRICES AND RENTAL RATES - SECRETARIAT' S REACTION IS THAT CODE DOES NOT COVER QUESTIONS ABOUT PRICES AND PRICE RESTRICTIONS. USG COULD REFER SPANISH PRICE CONTROLS TO ORGANIZATION UNER ARTICLE 16 AS " INTERNAL ARRANGEMENTS LIKELY TO RESTRICT POSSIBILITY OF EFFECTING CURRENT INVISIBLE OPERATIONS". (COMMENT: WE DISAGREE WITH DEPT.' S VIEWS EXPRESSED P. 7 ATTACHMENT TO REF (B) THAT PARA 7 OF OLD FILMS ANNEX " PROHIBITED RESTRICTIONS ON THE FREEDOM OF RESIDENT DISTRIBUTORS TO CONCLUDE CONTRACTS ETC..." . OLD PARA 7 SAID : " ANY EXISTING RESTRICTIONS... SHALL BE PROGRESSIVELY REDUCED".

(D) DISTRIBUTION QUOTAS - SECRETARIAT BELIEVES SPANISH PRACTICE WITH REGARD TO DISTRIBUTION QUOTAS IS, AS DEPT. NOTES, COVERED BY SPAIN' S RESERVATION ON ITEM E/1. (COMMENT: CONCERNING PARA 4, PAGE 7, ATTACHMENT TO REF UNCLASSIFIED

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(B) , WE DO NOT UNDERSTAND WHY DEPT. IMPLIES SPANISH MAY HAVE WANTED OR NEEDED TO RESERVE AGAINST PARA 2 OF FILMS ANNEX. PARA 2 PERMITS SCREEN QUOTAS ON FULL-LENGTH FEATURE FILMS. IT IS UNLIKELY SPAIN WOULD WANT TO RESERVE AGAINST THAT PRIVILEGE.)

(E) PROHIBITION ON EXPORT OF DUBBED PRINTS - SECRETARIAT AGREES WITH DEPT. VIEW THAT SPANISH RESERVATION IS BROAD ENOUGH TO PERMIT SPANISH EXPORT RESTRICTIONS. (COMMENT: QUESTION CAN WELL BE RAISED, AS DEPT. NOTES BOTTOM P.7 AND TOP P. 8 IN ATTACHMENT TO REF (B), ABOUT PERMISSIBILITY OF SUCH RESTRICTIONS ON EXPORTATION OF T. V. FILMS. PARA 9 OF OLD FILMS ANNEX MAY HAVE HELPED US HERE, BUT DEPT. SHOULD NOTE THAT IN CARRYING OVER OBLIGATION OF PARA 9 INTO ITEM E/1 UNER RE- ARRANGED NEW FILMS ANNEX, THE WORD " EXPORTATION " IS NOTICEABLY MISSING. SECRETARIAT BELIEVES THIS PROBABLY OVERLOOKED BY INVISIBLES COMMITTEE' S GROUP OF FILMS EXPERTS IN DRAFTING NEW FILMS ANNEX.

3. SECRETARIAT CONCLUDES ON BASIS ABOVE THAT OUR LEGAL CASE AGAINST SPANISH UNDER INVISIBLES CODE IS NOT STRONG ENOUGH TO BRING SUCCESSFUL ACTION UNER THE CODE. IT ADMITS THAT DISCRIMINATION EXISTS, BUT NOT OF THE TYPE THAT CAN BE CORRECTED BY APPLICATION TO CODE. LEGAL BROWN

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SERVICE, HOWEVER, HAS YET TO GIVE AN OPINION ON WHETHER ARTICLE 9 IS APPLICABLE TO DIFFERENTIATED RATE STRUCTURE FOR DUBBING FEES.

4. IN OUR VIEW, REFERENCE TO ORGANIZATION UNDER EITHER ARTICLE 16 WITH REGARD TO " FRUSTRATING RENTAL AND PRICE CEILINGS" OR UNDER ARTICLE 17 WITH REGARD TO " DISCRIMINATORY DUBBING FEES", IS UNLIKELY TO BEAR IMMEDIATE POSITIVE RESULTS. SO FAR AS WE KNOW, NO MEMBER COUNTRY HAS FORMALLY RESORTED TO THESE ARTICLES. IN ABSENCE EXISTING PRECEDENTS, PROGRESS WITH OUR CASE WOULD BE SLOW. FURTHER DIFFICULTY, WHICH GENERALLY APPLICABLE TO WHOLE QUESTION OF SPANISH FILM RESTRICTIONS, IS THAT OUR CASE DEPENDS ON OTHER MEMBERS (STARTING WITH EXPERTS ON INVISIBLES COMMITTEE) ACCEPTING RELATIVELY COMPLEX CHAIN OF OUR LEGAL REASONING. FRANKLY, IN ABSENCE OF MORE CUT- AND- DRIED CASE, OTHERS ARE LIKELY TO PUT OFF MATTER AS BEING PERHAPS IRRELEVANT AND MORE CONDUSIVE TO BILATERAL SOLUTION. (SIMILAR REACTION OCCURRED WHEN ITALIANS COMPLAINED LAST YEAR TO INVISIBLES COMMITTEE ABOUT TURKISH RESTRICTIONS ON MARITIME FREIGHT RECEIPTS.)

5. WITH REGARD TO LIST OF PRIORITIES NOTED BY EMBASSY MADRID (PARA 7, REF C), WE CONCLUDE SCREEN QUOTAS (MOST IMPORTANT AREA) ARE PERMITTED UNDER CODE WITHOUT DOUBT. NEXT MOST SIGNIFICANT UNCLASSIFIED

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PROBLEM (PRICE AND RENTAL CEILINGS) DEPENDS FOR SUCCESSFUL OUTCOME ON OTHERS HERE ACCEPTING FORMALLY AN APPROACH BY US UNDER ARTICLE 16 ON GROUNDS THAT SPANISH ARE FRUSTRATING LIBERALIZATION. LAST PRIORITY (DUBBING FEES) DEPENDS FOR SUCCESSFUL OUTCOME ON OTHERS ACCEPTING OUR VIEW UNDER ARTICLE 17, IN CONJUNCTION WITH ARTICLE 9, THAT FEES FOR U. S. FILMS ARE DISCRIMINATORY. OTHER COUNTRIES WHOSE FILMS PAY LOWER FEES MAY NOT BE EXCITED ABOUT ESTABLISHING " NON- DISCRIMINATORY" STATE, IF THIS WERE TO IMPLY THAT FEES FOR THEIR FILMS SHOULD BE EQUAL TO THOSE ON OUR FILMS.

6. FOUR BASIC OPTIONS SEEM TO REMAIN OPEN: (1) BILATERAL US GOVERNMENT OR INDUSTRY NEGOTIATION WITH SPANISH ON ASSUMPTION THAT US MIGHT MAKE FORMAL COMPLAINT TO OECD IF SATISFACTION NOT ACHIEVED (POSSIBLE ONLY IF OPTION TWO NOT TAKEN); (2) REQUEST SECRETARIAT TO EXPLORE ISSUE DIRECTLY WITH SPANISH REPS AT OECD; (3) FORMAL US COMPLAINT TO OECD UNDER CODE; (4) TAKE UP SPANISH FILMS RESTRICTIONS IN CONTEXT NEXT REGULAR EXAMINATION OF ALL COUNTRY FILM RESERVATIONS (NO DATE YET FIXED FOR THIS EXAMINATION). FIRST OPTION MAY BE BEST IF CHANCE OF SUCCESS WITH SECOND AND THIRD IS MINIMAL (AS WE BELIEVE). HOWEVER THIS OPTION PROBABLY WEAKENED IF OPTION TWO IS ALSO TAKEN. SECOND OPTION RUNS RISK THAT SECRETARIAT WOULD INFORM SPANISH THAT IT BELIEVES OUR LEGAL CASE IS

WEAK. THIRD OPTION HAS HIGH PROBABILITY OF FAILURE IN INVISIBLES
COMMITTEE DUE TO EVIDENT WEAKNESS OF US LEGAL CASE UNDER CODE.
FOURTH OPTION, COMBINED WITH FIRST, SEEMS MOST REALISTIC APPROACH
AT PRESENT. BROWN

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